August 9, 1999

CRESCENT
Real Estate Equities Limited Partnership

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
TW-A325
Washington, D.C. 20554

Re: Promotion of Competitive Networks in Local Telecommunications Markets. WT Docket No. 99-217; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98

Dear Ms. Salas:

We write in response to the FCC's Notice of Proposed Rulemaking released on July 7, 1999, regarding forced access to buildings. We enclose six (6) copies of this letter, in addition to this original.

We are concerned that any action by the FCC regarding access to private property by large numbers of communications companies may inadvertently and unnecessarily adversely affect the conduct of our business and needlessly raise additional legal issues. The Commission's public notice also raises a number of other issues that concern us.

Background

Crescent Real Estate is in the commercial real estate business. We own over 2,951,000 square feet in Houston Center, located in Houston, Texas, and our current occupancy levels are above 95 percent. Crescent also owns another 29,000,000 square feet of office space across seven southwestern states, and has established access agreements with Competitive Local Exchange Carriers (CLEC's) at this time. We also have agreements with various wireless communications companies and continue to expand our tenants' access to new technologies.

Issues Raised by the FCC's Notice

First and foremost, we do not believe the FCC needs to act in this market because we are currently doing everything we can to satisfy our tenants' demands for access to telecommunications. In addition, the FCC's request for comments raises the following issues of particular concern to us: expansion of the scope of existing easements; "nondiscriminatory" access to private property; expansion of the existing OTARD rules to include non-video services; and location of the demarcation point.

1. **FCC Action Is Not Necessary.**
   - Commercial real estate is an extremely competitive arena. Property owners must constantly review and augment the levels and kinds of services available to accommodate an ever-widening array of needs expressed by our tenants. Failure to do so jeopardizes our ability to offer superior services to prospective and existing tenants. And, lest we forget, tenants occupy buildings under a lease agreement that does not operate solely in favor of the landlord. If a tenant's specific issues cannot be resolved within their existing agreement with a landlord, the tenant can relocate to another building whose bundle of services more readily address the tenant's specific needs.
   - We presently have access agreements with MCIMetro, Metropolitan Fiber Services, RAM Mobile Data Services, Houston Cellular, Teligent, Winstar, TCG, and Intermedia. Negotiations for agreements are underway with Level 3 Communications and Hyperion Communications—both CLEC's.
   - The access for these groups has not always been easy for the landlord; equipment and space requirements have necessitated unique solutions that specifically accommodated a telecommunications provider's needs. Areas normally reserved for building functions have been adapted to permit co-location of both building equipment and telecommunications equipment when possible.

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2. **"Nondiscriminatory" Access.**
   - Given the continuum over which various telecommunications technologies have developed, there can be no such thing as nondiscriminatory access. Each day new providers appear, but limited spaces within a building means that only a portion of those providers can install their facilities within buildings.
   - The nature of your proposed rule is to sidestep the incumbent LEC and, instead, place the burden for market access on the building owner. You suggest that there are barriers to competition created by third parties. Building owners are not barriers to competition; the very nature of our -- business requires that we eliminate barriers that prevent our customers—tenants—from achieving their potential within our buildings.
   - To require "nondiscrimination" requires that, resulting from limited space availability, we would have to "rotate" providers so that all providers could have a turn at serving the needs of the tenants. Of course, this will completely disrupt the tenants' access to then-acceptable telecommunications services just so the latest entries into this marketplace have unfettered access to tenant populations. You will have successfully discriminated against the user—the very person for whom your ill-informed standards proclaim to protect.
   - Building owners must have control over who enters a building. The owner faces liability for damages to the building, the leased premises, to facilities of other providers; for violations of safety codes; for personal injury to tenants or visitors; and, most importantly, for the security of tenant communications lines. Because of these very real issues, building owners must necessarily examine and review the qualifications and reliability of all providers. As a side note, Teligent and Winstar (two of your notice's more vocal complainers against building owners) both have successfully negotiated access agreements to our buildings.
   - As a part of their negotiating tactics, competitive local exchange carriers (CLEC's) have demanded "the same deal that Southwestern Bell gets," but they can't define what Southwestern Bell gets—or gives. CLEC's would have building owners believe that we are in violation of the law if they are charged a fee for building riser access.
   - Terms of various agreements vary because each vendor differs from others in a number of respects. New companies with no track record, no indication of financial responsibility, or having inadequate insurance coverage pose greater risks to building owners. That additional risk must be considered when establishing requirements for security deposits, indemnity clauses, or other means by which the owner can protect both his—and a tenant's—ability to conduct business successfully.
   - Different classes of commercial activity require different solutions. One cannot reasonably expect that the needs of retail, residential, commercial office, or industrial tenants to be satisfied by one set of rules.
   - Building owners had no control over the incumbent LEC's access to the building. In our case, Southwestern Bell was the carrier of last resort—the provider of all telecommunications services when the buildings were built. Southwestern Bell operated as a monopoly under the governance of the Public Utility Commission of the State of Texas. There was no choice available to either the building owner or the tenant. The only equitable solution to this conversion of business practice is to let the competitive market determine who has access to a particular building.
   - The term "nondiscriminatory," as used in the FCC notice, clearly discriminates against both building owners and tenants. If these new carriers can discriminate by choosing which buildings or tenants they serve, then building owners should be able to do the same. The single issue that clearly stands out with respect to the new providers is their desire to "cherry pick" the market to secure larger users at the expense of offering service to all users. These providers do not have to meet the standards required of carriers of last resort. Instead, these carriers expect that they are entitled to force their way into a building without even establishing their ability to deliver the services promised.

3. **Scope of Easements.**
   - The FCC cannot expand the scope of access rights held by every incumbent LEC to allow every competitor to use the same easement or right-of-way. In some buildings, existing grants may be

broad enough to allow other providers access, but other grants are narrow and limited to facilities owned by the grantee.

- The FCC is proposing expansion of easement rights with no compensation to the owner. Such actions are unilateral in scope and injurious to the owner; expanding the bundle of rights without renegotiating the easement amounts to an illegal taking.
- Under no circumstances can the riser space within a building be construed as an extension of an easement. First of all, riser space is not a "conduit" as defined by the FCC. Second, space limitations within existing structures preclude expansion to accommodate untold numbers of potential providers. Lastly, I don't see where the government builds each of us our own individual freeway to our workplace. We share with other workers. If the FCC wants to mandate access, they should consider how these new providers could share their access with each other or with the incumbent LEC.

4. **Demarcation Point.**
   - Each building is unique with respect to how demarcation is addressed within the property, depending on the nature of the property and tenants within the building, the owner's business plan for the property, and skill levels within the owner's organization. Some building owners will want to assume responsibility for managing all wiring within a property; others will not.
   - The current demarcation rules work just fine; they offer flexibility that permits the owner to tailor his business plan to a particular property or class of tenant.

5. **Exclusive Contracts.**
   - It is not our policy to accept exclusive contracts with any telecommunications provider.
   - In an office setting, exclusive contracts would be a limiting factor with respect to the range of services that a tenant could enjoy as well as the ability to change providers when tenant needs change, even though such contracts could potentially resolve space and access needs.

6. **Expansion of Satellite Dish Rules.**
   - We are in opposition to expansion of the existing rules; we don't believe that Congress' intent was to interfere with our ability to manage our property. OTARD specifically dealt with the delivery of over-the-air video services, and limited the ability of the receiver to placing the antenna in space controlled directly by the tenant.
   - Expansion would also imply a provider's right to have unfettered access to building roofs and roof mechanical areas. The potential for liability exposure or damage far outweighs any such access rights. Any signal that can be provided "over the air" can also be piped into a building through either fiber or a twisted copper pair of wires. Rather than negotiate access with incumbent LEC's or other telecommunications providers, these "over the air" providers prefer that you force the building owner to give them unlimited roof access—an area of a building never intended for common use as another easement.

In conclusion, we urge the FCC to consider carefully any action it may take. Thank you for you attention to our concerns.

Sincerely,

Ted Freyer

Ted Freyer
Senior Property Manager